**IN THE HIGH COURT OF GUJARAT AT AHMEDABAD**

**SPECIAL CIVIL APPLICATION No. 14013 of 2004**

**For Approval and Signature:**

**HONOURABLE MR.JUSTICE AKIL KURESHI**

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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**S.G.SHILAJIA - Petitioner(s)**
**Versus**
**STATE OF GUJARAT & 1 - Respondent(s)**

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**Appearance :**
MR IS SUPEHIA for Petitioner(s) : 1,
MR SIRAJ GORI AGP for Respondent(s) : 1 - 2.

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**CORAM : HONOURABLE MR.JUSTICE AKIL KURESHI**

**Date : 30/06/2006**

**ORAL JUDGMENT**

1. Though the petitioner has combined two seemingly unconnected reliefs in this petition, considering the fact that the petitioner is a retired Government

servant and that his petition has been admitted and pending for quite sometime now, I do not find it appropriate to direct the petitioner to file separate petitions for separate grievances. I have, therefore, heard learned advocates appearing for the parties on both grievances raised by the petitioner in this petition.

2. Firstly, the petitioner has challenged a penal order dated 5/7/1999 by which a cut in the pension of the petitioner to the extent of Rs. 300/- p.m. permanently has been imposed which was later on modified to a penal cut in pension to the extent of Rs. 200/- p.m. for five years by the order dated 20th July, 2004. The second aspect of the grievance of the petitioner is that though he had become eligible to receive Higher Grade Scale w.e.f. 3rd October, 1993 the same was not granted to him.

3. With respect to the penal order, it may be seen that the petitioner while in service was issued a charge sheet dated 22nd August, 1994. The charge sheet included series of charges. It inter alia alleged that the petitioner while discharging the duty as Sales Tax Officer, Division 1, Vadodara had committed irregularities in granting refund to the dealers of Pan Masala. The details of such irregularities suggested that a total of Rs. 36,22,922/- was refunded to the individual assessee unauthorizedly. The charge sheet further suggested that certain set offs were given by the petitioner

to the dealer to the extent of Rs. 3,45,91,488/- It was suggested that above refund and set offs were opposed to the provisions of law and were granted without proper verification. It was thus alleged that the petitioner through his action has caused financial loss to the Government. With these charges as a back ground departmental inquiry was conducted against the petitioner though he retired on superannuation. In the mean time, the inquiry continued under Rule 198 (a) of BCSR. The Government eventually imposed the first penal order dated 5th July, 1999 imposing a cut in pension of the petitioner to the tune of Rs. 300/- p.m. permanently. The petitioner challenged the said penalty before this Court by filing SCA No. 7265/99. The petition was allowed in part by order dated 11/9/2003. Respondents were directed to reconsider the issue and pass a fresh order. The representation of the petitioner was required to be considered. In the second round of the exercise after considering the representation of the petitioner, the Government modified the penalty order and imposed a cut of Rs. 200/- p.m. in the pension of the petitioner for a period of five years. It is this penalty that the petitioner has challenged in this petition.

4. I have heard learned advocates appearing for the parties. Learned advocate Shri Supehia for the petitioner submitted that the petitioner was exercising quasi-judicial functions and his conduct, therefore, ought not to be inquired into. It was

contended that there was no material on record to establish the charges. It was further contended that without taking into consideration the issues raised by the petitioner in the representation the impugned order came to be passed. It is also contended that under very similar circumstances co-delinquents were allowed to go scot free and no penalty was imposed on them.

4.1 On the other hand learned AGP Shri Gori opposed the petition and submitted that the misconduct of the petitioner is extremely gross in nature. By his irregularities he has caused huge financial loss to the Government. Though he was exercising quasi judicial functions, the conduct of the petitioner was open to inquiry. He further submitted that upon remand by the High Court the Government decided to take a lenient view and reduce the penalty and there was no further scope for reduction in the penalty.

5. It would appear that there were serious charges against the petitioner. Even as quasi judicial authorities it is well settled that the conduct of the officer is not beyond scrutiny. The disciplinary authority on the basis of evidence on record found that the charges are proved. Unless the conclusions of the disciplinary authority are found to be perverse in the sense, not supported by any evidence at all, this Court would not in exercise of power under Article 226 of Constitution of India be in a position to interfere with the same. This Court is

not exercising appellate jurisdiction. Having examined the material on record, it is not possible to conclude that there was no evidence to permit the Government to hold the charges as proved. The inquiry officer has given detailed reasons to come to the conclusion that the charges are proved. Even if it is true that the first penal order did not record the elaborate reasons for the conclusions of the Government, the subsequent order passed after the High Court remanded the proceedings is a detailed order and all the averments made by the petitioner have also been taken into account. In that sense it is not possible to hold that the order is not a speaking order. When it is found that even if not malafide, the action of the petitioner has resulted into substantial loss to the Government it was always open to the Government to inquire into the conduct. I see no reason to interfere with the order of the penalty and this prayer is, therefore, rejected.

6. Incidentally, the petitioner has complained about non-granting of the benefit of the higher pay scale. The resolution dated 16th August, 1994 provided for grant of higher pay scale to Government employees upon completion of 9 years of service in the same scale without progress for promotion. The petitioner completed such period of 9 years on 3rd October, 1993. The resolution was passed on 16/8/1994 and was made effective from 1st June, 1987. The charge sheet was issued against the petitioner on 22nd August, 1994. Therefore, on the date when the

petitioner was served with the charge sheet his right to receive higher pay scale got crystallized. Even if it is accepted that the Government servant whose conduct is under cloud- cannot seek benefits of higher pay scale on the principles analogous to receive promotion in the cadre, it can be seen that the date on which the petitioner was served with the charge sheet, he had already earned a right to receive higher pay scale. The decision of the Hon'ble Supreme Court in the case of Union of India vs. K.V.Jankiraman reported in AIR 1991 SC 2010 can be usefully referred to. In the said decision it has been held that promotion of the Government servant can be withheld only if on the date when his promotion is being considered, he has been served with the charge sheet and mere contemplated departmental inquiry cannot be a ground for the Government to withheld such a promotion.

7. Applying the said principle, it would appear that the respondents could not have held back the benefit of higher pay scale in favour of the petitioner when he had completed the requisite number of years of service on 3rd October, 1993. The resolution was passed on 16th August, 1994 and charge sheet was issued on 22nd August, 1994. Considering all these aspects of the matter though the challenge of the petitioner to the penalty order of cut in pension is rejected, his request for granting of higher pay scale is allowed.

8. In the result the petition succeeds in part. Respondents shall grant higher pay scale from due date and release the arrears of pension. This exercise shall be completed within three months from the date of receipt of a copy of this order. With these directions, the petition is disposed of. Rule is made absolute to the above limited extent.

9. It may be noted that though the petitioner has claimed interest on delayed payment of gratuity, such a claim cannot be accepted since the departmental inquiry ultimately resulted into a penalty being imposed on the petitioner. The respondents had withheld Rs.15,000/-from the gratuity entitlement to the petitioner. Now that the inquiry is over the respondent shall communicate to the petitioner the manner in which the said amount is to be treated.

(Akil Kureshi, J.)

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